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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,184	09/21/2000	Kyoko Matsumoto	TAK-140-USAP	9127

7590 02/04/2003  
Ronald R Snider  
PO Box 27613  
Washington, DC 20038-7613

EXAMINER

BLECK, CAROLYN M

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/666,184

Applicant(s)

MATSUMOTO ET AL.

Examiner

Carolyn M Bleck

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the application filed 21 September 2000.

Claims 1-5 are pending. An IDS statement has not been entered or considered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter for which an adequate written disclosure was not provided in the specification.

As per claim 5, the Applicant claims charts having a horizontal axis expressing an image of "Active-Gentle" and a longitudinal axis expressing an image of "Fresh-Gentle." Such charts are not adequately described in the specification. The Applicant has the option of amending the specification to provide adequate written disclosure of the charts and axes or canceling the claim. The Applicant is respectfully reminded that no new matter may be added to the specification. If the Applicant opts to incorporate the claimed subject matter into the specification, the description of the claimed subject matter must remain within the scope and limits of the original claim language.

4. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 1 recites "obtaining through computer graphic methods an average face composition by a survey..." It is not clear how the computer graphic methods obtain an average face composition through a survey. The claim appears to be incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Further, claim 1 recites "performing enquires among a plurality of different races of people for the average face on which various cosmetics are furnished to receive resulting opinions of those people." It is not clear how an average face is obtained and what the link is between the enquiries and opinions. The claim appears to be incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

(B) Claims 1-5 incorporate the deficiencies of claim 1 through dependency, and are therefore rejected.

**NOTE:** In light of the 112, 1<sup>st</sup> and 2<sup>nd</sup> problems, the Examiner is interpreting the claims and applying prior art as best possible using these interpretations. These interpretations of claim language are for examination purposes only.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rigg (6,293,284).

(A) As per claims 1-3, Rigg discloses a method for applying a virtual makeover to a person's face comprising:

(a) directing a digital camera at a person's face to register an image of at least a portion of the face;

(b) calculating color parameters on two or more areas of the image to identify the natural color of the skin, wherein the natural skin color can be determined via digital imaging by comparing L\*a\*b color values on at least two different areas of the facial image, wherein the digital scan identifies those areas of skin not covered by makeup, wherein a color value is provided for that area and utilized that value as a baseline color for re-imaging a cosmetically stripped face onto a monitor;

- (c) transmitting the image to a monitor for displaying the face;
- (d) correlating the natural skin color with a predetermined palette of colors appropriate to the calculated skin color to provide a color matching facial foundation;
- (e) accepting feedback from the customer on the customer's preferences, for example, the preferences can be with respect to three possible "looks" such as fashion, natural, or go-to-work types, wherein the feedback and images can be viewed from an internet website, and wherein the customer can evaluate various makeovers on their face;
- (f) locating areas of the face for application of a color cosmetic, such as the lips, cheeks, and eyes; and
- (g) displaying the facial image with the predetermined color palette on the located areas (col. 1 line 65 to col. 2 line 31 and col. 2 line 35 to col. 3 line 24).

Rigg is entirely silent as to whether a plurality of different races of people are used within the method. However, Rigg discloses determining a person's natural skin color (col. 2 lines 3-4), and it is respectfully submitted that this determination would include people of all races. The skilled artisan would have found this an obvious modification within the method of Rigg with the motivation of allowing the selection of the best color combinations for each individual (Rigg; col. 1 line 52-53).

(B) As per claim 5, Rigg fails to include charts having a horizontal axis expressing an image of "Active-Gentle" and a longitudinal axis expressing an image of "Fresh-Gentle." However, Rigg includes displaying images from no makeup to full makeup with all

products, such as eye shadow, eye liner, lip liner, and blush, or any step in between (col. 3 lines 5-16). It is respectfully submitted that using charts to display changes or variations in color is a technique typically used, and the skilled artisan would have found it an obvious modification within the method of Rigg with the motivation of providing to consumers the effects of different color cosmetics on their faces (Rigg; col. 1 lines 45-50).

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rigg (6,293,284) as applied to claim 1 above, and further in view of Utsugi (6,502,583).

(A) As per claim 4, the relevant teachings of Rigg are as discussed in the rejections above, and incorporated herein.

Rigg fails to disclose color maps comprising charts having a horizontal axis showing hues and a longitudinal axis showing tones. Utsugi includes subjecting facial images to image processing to divide a face into a plurality of areas originating from differences between bright and dark areas, wherein color data is then acquired for each segmented area, and wherein the color data consists of hue and brightness (reads on "tone"), and wherein the face is displayed in a chart (Fig. 1, col. 2 lines 30-35, col. 4 lines 41-55, and col. 7 lines 3-60). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include the aforementioned components of Utsugi within the method of Rigg with the motivation of providing to

consumers the effects of different color cosmetics on their faces (Rigg; col. 1 lines 45-50) and displaying the affects of shading on the face (Utsugi; col. 1 lines 28-30).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to the Applicant's disclosure. The cited but not applied prior art teaches cosmetic selection and display system (4,160,271), a method of projecting a portrait of a client and providing a makeover (4,842,523), a cosmetic selecting device (5,178,169), a method and instrument for selecting personal compatible colors (5,311,293), method and apparatus for determining the foundation makeup color that substantially reproduces a person's natural skin color (5,478,238 and 5,797,750), a method for matching cosmetics on an individual's skin to a desired cosmetic color (5,562,109), a method and system for customizing dermatological foundation products (5,785,960), a cosmetic personal color analysis method and kit using value scale, colors, and charts (5,924,426 and 6,000,407), a method for the selection of a feminine hygiene product system (6,093,027 and 6,368,113), a system for merchandising using consumer information from surveys (6,233,564), a method and system for providing customized color cosmetics (6,388,349), and a point-of-sale body powder dispensing system (6,412,658).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-



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3981. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 306-1113.

**10. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 305-7687 [Official communications; including After Final communications labeled "Box AF"]

(703) 746-8374 [Informal/ Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor (Receptionist).

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CB

January 29, 2003

  
DINH X. NGUYEN  
PRIMARY EXAMINER